

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILFREDO VARGAS-LOPEZ, aka
TAURINO A. GUZMAN-
TRINIDAD,

Defendant.

NO. CR-04-2180-RHW
CV-05-3082-RHW

**ORDER DISMISSING MOTION
TO VACATE, SET ASIDE, OR
CORRECT SENTENCE BY A
PERSON IN FEDERAL
CUSTODY PURSUANT TO
28 U.S.C. § 2255**

Before the Court is Defendant's Motion to Vacate, Set Aside, or Correct Sentence By a Person in Federal Custody pursuant to 28 U.S.C. § 2255 (Ct. Rec. 32). In his motion, Defendant contends that his conviction was obtained by violation of the privilege against self-incrimination.

BACKGROUND

Defendant was charged with and plead guilty to being an Alien in the United States After Deportation, in violation of 8 U.S.C. § 1326. On April 19, 2004, the Court sentenced Defendant to a thirty-three (33) month term of imprisonment; a 3 year term of supervised release; and \$100 special penalty assessment.

DISCUSSION

A federal prisoner, under 28 U.S.C. § 2255, may move the court to vacate, set aside, or correct a sentence on the grounds that (1) the sentence imposed was in violation of the Constitution or laws of the United States; (2) the court lacked

**ORDER DISMISSING MOTION TO VACATE SET ASIDE OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY, 28 U.S.C. § 2255 ~ 1**

1 jurisdiction to impose such a sentence; or (3) that the sentence exceeded the
2 maximum authorized by law. Unless the motion, files, and records conclusively
3 show the prisoner is not entitled to relief, the court shall cause notice to be served
4 upon the United States Attorney, grant a prompt hearing, determine the issues, and
5 make findings of fact and conclusion of law. 28 U.S.C. § 2255. If it is plainly
6 apparent that the petitioner is not entitled to relief, however, pursuant to Rule 4(b),
7 Rules Governing Proceedings in the United States District Courts, the court may
8 voluntarily, *sua sponte*, dismiss the motion.

9 Defendant argues that his conviction was obtained in violation of the
10 privilege against self-incrimination. Although Defendant provided the Court with
11 supporting facts to support his claim, these facts do not address Defendant's claim
12 of violation of the privilege against self-incrimination. The facts merely assert the
13 factual basis for his illegal re-entry conviction. As such, Defendant's petition fails
14 to establish that he is entitled to relief.

15 Accordingly, **IT IS HEREBY ORDERED:**

16 1. Defendant's Motion to Vacate, Set Aside, or Correct Sentence
17 Sentence Pursuant to 28 U.S.C. § 2255 (Ct. Rec. 32) is **DISMISSED**.

18 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
19 order, provide copies to Defendant and the Federal Defender's Office, and close the
20 file.

21 **DATED** this 23rd day of January, 2005.

22
23 s/ Robert H. Whaley

24 ROBERT H. WHALEY
25 Chief United States District Judge

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